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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-916]

Laminated Woven Sacks from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results and Amended Final Results of the Antidumping Duty Administrative Review; 2009-2010

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 13, 2013, the United States Court of Appeals for Federal Circuit (CAFC), issued its decision in AMS Associates, Inc. v. United States, 737 F.3d 1338 (CAFC 2013) (AMS II), affirming the Court of International Trade's (CIT) decision in AMS Associates, Inc. v. United States, 881 F. Supp. 2d 1374 (CIT 2012) (AMS I). In AMS I, the CIT held that the Department of Commerce (the Department) exceeded its authority under 19 CFR 351.225(l) by retroactively suspending liquidation of entries of laminated woven sacks (LWS) produced in the People's Republic of China (PRC) using fabric imported from third-countries. Accordingly, the CIT remanded the case and ordered the Department to issue instructions to U.S. Customs and Border Protection (CBP) to lift the suspension of liquidation and liquidate the affected entries without regard to duties. Consistent with the decision of the CAFC in Timken<sup>1</sup>, as clarified by Diamond Sawblades,<sup>2</sup> the Department is notifying the public that the final judgment in this case is not in harmony with the Department's AR2 Final Results,<sup>3</sup> that it will liquidate the entries at issue in AMS I and AMS II without regard to duties, and that it is

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<sup>1</sup> See Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) ("Timken").

<sup>2</sup> See Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) ("Diamond Sawblades").

<sup>3</sup> See Laminated Woven Sacks From the People's Republic of China: Final Results of Second Antidumping Duty Administrative Review, 76 FR 21333 (April 15, 2011) ("AR2 Final Results").

amending the effective date of its country of origin determination regarding LWS produced in the PRC from imported fabric.

EFFECTIVE DATE: March 24, 2014

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION:

### Background

On August 7, 2008, the Department issued an antidumping duty order on LWS from the PRC.<sup>4</sup> The scope of the Order stated that:

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics; printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

### *First Administrative Review*

In the first administrative review of the antidumping duty order on LWS from the PRC, the Department preliminarily determined that the country of origin of LWS produced in the PRC from imported woven fabric is the PRC.<sup>5</sup> As a result, the Department issued instructions

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<sup>4</sup> See Notice of Antidumping Duty Order: Laminated Woven Sacks from the People’s Republic of China, 73 FR 45941 (August 7, 2008) (“Order”).

<sup>5</sup> See Laminated Woven Sacks from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 55568, 55569 (September 13, 2010).

notifying CBP to continue suspending liquidation of all LWS from the PRC, regardless of the country of origin of the woven fabric, consistent with the suspension of liquidation instructions issued following the Order.<sup>6</sup>

Following the preliminary results, the Department issued additional instructions to CBP to mitigate inaccurate reporting of entries arising from the technical restrictions of CBP's electronic filing system. These instructions created a series of 10-digit case numbers to allow LWS produced in the PRC from fabric originating in a third country to be properly claimed as LWS subject to the Order upon entry into the United States.<sup>7</sup>

In its March 18, 2011 final results, the Department finalized its country of origin determination and continued to find that the LWS finishing process, which includes lamination and printing processes, substantially transforms the inherent nature of the woven fabric input. The Department also continued to find that, when such substantial transformation takes place in the PRC, the country of origin for the produced LWS is the PRC.<sup>8</sup>

#### *Second Administrative Review*

On September 29, 2010, the Department initiated the second administrative review of LWS from the PRC.<sup>9</sup> Because parties only requested a review of Zibo Aifudi Plastic Packaging Co. Ltd. (Zibo Aifudi), we initiated the review with Zibo Aifudi as the sole mandatory respondent. Thereafter, Zibo Aifudi notified the Department of its intent to withdraw from the review and refused to participate in the review. Thus, in the preliminary results, we determined

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<sup>6</sup> See CBP Message No. 020431 (July 23, 2010); see also CBP Message No. 8234202 (August 21, 2008) (ordering CBP to suspend imports of LWS from the PRC that were entered or withdrawn from warehouse for consumption on or after January 31, 2008).

<sup>7</sup> See CBP Message No. 0327303 (November 23, 2010); see also CBP Message No. 0327306 (November 23, 2010).

<sup>8</sup> See Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Order Administrative Review, 76 FR 14906, 14906-07 (March 18, 2011) ("AR1 Final Results") and accompanying Issues and Decision Memorandum at Comments 1b and 1d.

<sup>9</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 75 FR 60076 (September 29, 2010).

that, because Zibo Aifudi failed to respond to the Department's antidumping duty questionnaires and withdrew its participation from the review, it was not eligible for a separate rate and should be treated as part of the PRC-wide entity, to which we subsequently assigned an adverse facts available rate.<sup>10</sup>

AMS Associates, Inc., (d/b/a Shapiro Packaging) (AMS), the U.S. importer of LWS exported by Zibo Aifudi, entered an appearance in the second administrative review and filed its case brief, contending that the Department's country of origin determination in the first administrative review was procedurally erroneous and that the Department had no statutory or regulatory basis to issue suspension instructions to CBP in the context of an annual administrative review. However, AMS did not challenge the Department's (1) country of origin determination on LWS produced in the PRC from imported fabric, (2) preliminary determination of Zibo Aifudi's ineligibility for a separate rate, (3) application of adverse facts available to the PRC-wide entity, or (4) the adverse facts available rate applied to the PRC-wide entity. In the AR2 Final Results, the Department continued to find that the application of adverse facts available was warranted for the PRC-wide entity and that it followed the correct procedures in making the country of origin determination in the prior review.<sup>11</sup>

#### Court Rulings

Subsequently, AMS challenged the Department's AR2 Final Results, arguing that the Department did not act in accordance with its own regulations by conducting a scope analysis during the course of the first administrative review and exceeded its authority by issuing instructions to CBP to suspend LWS produced in the PRC from imported fabric.<sup>12</sup> On December

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<sup>10</sup> See Laminated Woven Sacks From the People's Republic of China: Preliminary Results of the Second Administrative Review, 75 FR 81218 (December 27, 2010).

<sup>11</sup> See AR2 Final Results, 76 FR at 21334, and accompanying Issues and Decision Memorandum at Comment 1.

<sup>12</sup> See AMS I, 881 F. Supp. 2d at 1378-79.

18, 2012, the CIT held that the Department exceeded its authority by suspending liquidation of all entries of LWS produced in the PRC from imported fabric, which AMS reported as non-subject merchandise based solely on the country of origin of the fabric input.<sup>13</sup> The CIT remanded the case and ordered the Department to issue instructions to CBP to lift the suspension and liquidate the affected entries (LWS produced in the PRC from imported fabric) without regard to duties.<sup>14</sup>

On December 21, 2012, the United States moved to stay execution of the judgment pending appeal. On January 11, 2013, the CIT granted the United States' motion and ordered that execution of the judgment, including liquidation of the entries at issue, be stayed through the conclusion of any appeal.

On appeal, the CAFC affirmed the CIT's judgment, holding that the Department (1) erred in failing to conduct a formal scope inquiry in this case because the scope of the original antidumping order was unclear, and (2) exceeded its authority under 19 CFR 351.225(l)(2) by ordering the suspension of liquidation retroactive to the beginning of the period of review when the order did not clearly cover LWS manufactured in the PRC from imported fabrics.<sup>15</sup>

#### Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CAFC's December 13, 2013, judgment in AMS II constitutes a final decision of that court that is not in harmony with the AR2 Final Results. This notice is published in fulfillment of the publication requirements of Timken.

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<sup>13</sup> See id., at 1382-83.

<sup>14</sup> See id., at 1383.

<sup>15</sup> See AMS II, 737 F.3d at 1344.

Accordingly, as instructed, the Department will lift the suspension of liquidation of the entries at issue.

#### Amended Final Results

Because there is now a final court decision, we are amending the AR2 Final Results to reflect the results of the litigation. The revised effective date of the Department's country of origin determination is now the publication date of the final results of the first administrative review, March 18, 2011.<sup>16</sup> Accordingly, the Department will instruct CBP to liquidate entries of LWS produced in the PRC from imported fabric that were entered, or withdrawn from warehouse, for consumption, before March 18, 2011 without regard to duties.<sup>17</sup> The Department will release the draft instructions to interested parties prior to transmission of these instructions to CBP.

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 14, 2014.

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Ronald K. Lorentzen,  
Acting Assistant Secretary  
for Enforcement and Compliance.

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<sup>16</sup> See AR1 Final Results, 76 FR at 14906.

<sup>17</sup> See AMS II, 737 F.3d at 1344 (affirming a remand to lift the liquidation suspension for the entries which were the subject of the AMS litigation).